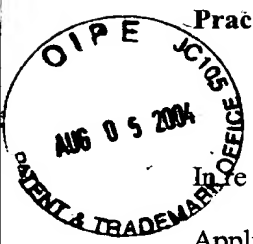


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Practitioner's Docket No. AP9673

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: **Ruckert** Confirmation No. **3938**
Application No.: **09/913,635** Group No.: **3683**
Filed: **December 11, 2001** Examiner: **B. Pezzlo**
For: **BRAKE PAD COMPRISING A RETAINING SPRING DEVICE**

Commissioner for Patents
Mail Stop Appeal Brief - Patents
P.O. Box 1450
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Date: <u>8/2/04</u>	Signature <u>Joyce Krumpe</u> <u>Joyce Krumpe</u>

REPLY BRIEF

Honorable Sir:

This is a Reply Brief in response to the Examiner's Answer dated June 1, 2004 (Paper No. 20052004) in the above-identified application. Submitted herewith are three additional copies of this Reply Brief.

Claim 34, is not disclosed, taught or suggested in the applied art. It is further noted that the Examiner has not indicated any specific teaching or suggestion in Winter of this feature recited in Claim 34.

In view of the foregoing, Appellant asserts that Claim 34 satisfies the requirements of 35 U.S.C. §112, second paragraph and defines patentable subject matter.

B. Claims 19, 28, 29 and 31-35 Are Not Anticipated by Winter

The Examiner's Answer asserts that the U-shaped portions may be absent from the combination of Claim 32, and that Claim 32 may be configured to look exactly like the spring shown in Fig. 1 of Winter. As best understood, Appellants agree that the feature of the U-shaped portions as recited in Claim 34 are not included in Claim 32. This is one reason why Appellants assert that Claim 34 stands on its own and defines patentable subject matter.

In addition, the Examiner's Answer asserts that Claims 31 and 32 read on a spring having portions or elements that are part of the same wire. It appears that the Examiner has commingled the various features recited in Claims 31 and 32.

The Appellant strongly asserts that Claims 31 and 32 stand on their own and are directed to separate embodiments of the invention. Specifically, Claim 31 is directed to a preferred aspect of the present invention, several separate spring elements 14, 14', 15, preferably two or three, are provided which each abut under spring bias in the piston groove 11. *See Fig. 1 of the specification.* On the other hand, Claim 32 is directed to an alternative embodiment of the invention in which a single spring element has an open design and includes several spring portions 4b, 4d, 4f, which are separated from one another, which abut in the piston groove 11 and apply differently directed force components to the brake pad 1. *See Fig. 3a of the specification.* Thus, contrary to the Examiner's Answer, the embodiment of the invention as recited in Claim 31 comprises several separate spring elements, and not a single spring element as recited in Claim 32.

(2) Related Appeals and Interferences

The Examiner's Answer asserts that Appellant's Appeal Brief did not contain a statement identifying the related appeals and interferences that will directly affect or be directly affected by or have a bearing on the decision in the pending appeal. However, Appellant's Brief indicated that there are no related appeals and interferences in Paragraph 2, Page 2.

(11) Response to Argument

A. Claim 34 Satisfies The Requirements of 35 USC §112, Second Paragraph

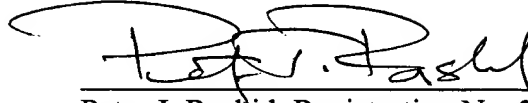
The Examiner's Answer asserts that the U-shaped portions are not the portions 4c, 4e located between the three spring portions 4b, 4d, 4f because the preamble of Claim 34 recites "The brake pad...comprising". After review of the prosecution history, this minor informality has never been brought to the attention of the Appellant during the prosecution of the application. If such an informality was brought up during the prosecution, Appellant could have easily corrected the preamble of Claim 34. Similarly, Appellant can easily correct the preambles of Claims 33, 35 and 36, which are identical to Claim 34, but were not asserted as indefinite by the Examiner.

Claim 34 recites that the two generally U-shaped portions are arranged between the three spring portions. Referring to Figure 3a of the specification, the two generally U-shaped portions 4c, 4e are located between the three spring portions 4b, 4d, 4f and are pressed against the carrier plate 2 of the brake pad 1 by way of retaining members 13b, 13c.

The Examiner's Answer asserts that elements 13b and 13c "fit the bill" of being two generally U-shaped portions. However, it appears that the Examiner ignores that Claim 34 depends from Claim 32, which positively recites that "the retaining spring includes a spring element including three spring portions, two of the three spring portions arranged opposite each other with respect to the piston axis..., and the third spring portion arranged between the other two spring portions...". Thus, the retaining members 13b, 13c do not "fit the bill" because they are not arranged between the three spring portions 4b, 4d, 4f, unlike the three spring portions 4b, 4d, 4f. Further, it is noted that Appellant believes that at least the feature of two generally U-shaped portions arranged between three spring portions, as recited in

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. Rashid", is written over a horizontal line.

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